

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

Docket No. 187,962

ORDER

Claimant appeals from an Award entered by Administrative Law Judge Shannon S. Krysl dated May 16, 1995. The Appeals Board heard oral argument September 20, 1995.

APPEARANCES

Claimant appeared by and through her attorney, Steven L. Foulston of Wichita, Kansas. Respondent and its insurance carrier appeared by and through their attorney, Gary A. Winfrey of Wichita, Kansas. The Workers Compensation Fund appeared by its attorney, James R. Roth of Wichita, Kansas.

RECORD AND STIPULATIONS

The Appeals Board has adopted the stipulations listed in the Award. The Appeals Board has also reviewed and considered the record listed in the Award.

ISSUES

The issues identified on appeal were:

- (1) Whether the Administrative Law Judge erred in considering a portion of claimant's unemployment compensation file.
- (2) The nature and extent of claimant's disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties, the Appeals Board finds, for the reasons stated below, that the claim should be remanded for consideration of the entire unemployment compensation file which the parties have now stipulated should be considered.

The record reflects that after this claim was submitted for a decision the Administrative Law Judge, on her own initiative, sought and obtained a portion of claimant's unemployment compensation file. A portion of the unemployment compensation was forwarded to the Administrative Law Judge on May 11, 1994. Although the cover letter indicated the contents of the file were not to be disclosed, the Administrative Law Judge, nevertheless, referred to those records. Specifically, she indicated that claimant had in those records certified she did not have a handicap or disability, thus, contradicting the testimony she had given in the current workers compensation claim.

On appeal, claimant initially argued that the entire unemployment compensation file should be excluded from consideration on the basis of K.S.A. 44-714. That statute provides in pertinent part as follows:

"Information thus obtained or obtained from any individual pursuant to the administration of this act shall be held confidential, except to the extent necessary for the proper presentation of a claim by an employer or employee under the employment security law, and shall not be published or be open to public inspection, other than to public employees in the performance of their public duties, in any manner revealing the individual's or employing units identity."

On appeal the claimant's counsel argues that from the discussion in the Award it seems apparent that the Administrative Law Judge did not have all of the unemployment compensation file. Claimant's counsel attached to his brief certain portions of that file which elaborate on the complaints and problems claimant had from an injury at work in the course of her employment for respondent. From our review of the file it does appear that the Administrative Law Judge did not have and did not consider the entire file. The file includes a letter from the Division of Employment Security office to the Administrative Law Judge forwarding the file. The attached file does not, however, include the documents which claimant asserts were part of his unemployment compensation file.

The Appeals Board does not take new evidence except by stipulation of all parties. In this case the parties have agreed that the entire file should be considered but have not agreed that it may be introduced for the first time to the Appeals Board. We must,

therefore, remand this claim to the Administrative Law Judge for consideration of the entire file as it may relate and be relevant to the issue of nature and extent of claimant's disability.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Shannon S. Krysl dated May 16, 1995, should be remanded to the designated Administrative Law Judge to review, as the parties have stipulated, the entire unemployment compensation file and determine, after doing so, the nature and extent of claimant's disability.

IT IS SO ORDERED.

Dated this ____ day of September 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Steven L. Foulston, Wichita, KS
Gary A. Winfrey, Wichita, KS
James R. Roth, Wichita, KS
Shannon S. Krysl, Administrative Law Judge
Philip S. Harness, Director